



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL
1301 CONSTITUTION AVENUE, NW
WASHINGTON DC 20004

DATE: October 23, 2018

PREPARED BY: SA (b) (6), (b) (7)

CASE #: OI-HQ-2016-ADM-0072 CROSS REFERENCE #:

TITLE: EPA Employees Downloading and/or Using WhatsApp Encrypted Messaging Application on EPA issued mobile devices

CASE CLOSING REPORT

Subject(s)	Location	Other Data
58 Known EPA Employees	HQ; Regions 1, 2, 3, 4, 5, 6, 8, 9, 10	

ALLEGATIONS:

- 1) EPA employees have downloaded and used the unauthorized encryption app: WhatsApp on their EPA devices in violation of EPA policy;
- 2) EPA employees conducted official EPA business within the *WhatsApp*
- 3) EPA employees failed to comply with the Federal Records Act, by not maintaining official EPA records.

NARRATIVE:

On February 2, 2017, The Washington Times published an article: "Lawsuit demands EPA say if employees using encrypted messages to evade open-records laws", which alleged unnamed EPA employees have downloaded and are using unauthorized encryption apps on their EPA devices in violation of EPA policy and failing to comply with the Federal Records Act (FRA), by not maintaining official EPA records. On February 3, 2017 Patrick Sullivan, Assistant Inspector General for Investigations (AIGI), EPA, Office of Inspector General (OIG), referred these allegations for investigation via the OIG Hotline for initiation. On February 14, 2017, the EPA

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INTERVIEWEE (if applicable):
Interviewee

DRAFTED DATE: 10/23/2017
Click or tap to enter a date

AGENT(S):
SA (b) (6), (b) (7)

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OIG received a Congressional request from the House of Representatives Subcommittee on Science, Space, and Technology to conduct an investigation into the use of EPA employees of unauthorized encryption applications on their EPA-issued devices.

On March 8th, 2017, OI opened an investigation of the following allegation: Whether EPA employees using the WhatsApp¹ application to communicate in violation of EPA policy² and the FRA.³

FINDINGS:

Allegation 1 – supported
Allegation 2 – unsupported
Allegation 3 - unsupported

Based upon OI's investigation, the evidence supports a finding that 58 EPA employees, either knowingly or unknowingly, were in technical violation of EPA policy which restricted the downloading of applications onto EPA devices not approved by the EPA's Office of Environmental Information (OEI). Further, OI identified only two EPA employees who conducted EPA business using WhatsApp. Both of these EPA employees had only used the application for scheduling official meetings while overseas, not for conducting substantive official EPA business. No evidence was found to support that the WhatsApp application was being used by EPA employees on their EPA issued mobile devices to purposely circumvent the applicable Federal record retention rules. One EPA employee was interviewed twice which resulted in the total number of employee interviews to reach 59, one number higher than the total number of employees identified as having downloaded the WhatsApp application onto their EPA-issued mobile device.

¹ WhatsApp is an application that provides free text messaging by using the phone's internet connection to send messages to avoid SMS fees. <https://www.whatsapp.com/features/>. It should be noted that OI was alerted by OEI of the presence of WhatsApp on EPA issued mobile devices after OI requested OEI identify any encrypted messaging application downloaded onto such devices.

² EPA CIO Policy # 2104.0 states, "Only software that has been approved by the IMO or the Agency's Chief Technology Officer and properly acquired by the Agency may be installed on EPA computer systems."

³ Federal record retention rules are both regulatory and criminal. 36 CFR 1220 mandates that all federal agencies actively maintain official records. 18 USC 1519 states, "Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both."

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INTERVIEWEE (if applicable):

Interviewee

DRAFTED DATE: 10/23/2017

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AGENT(S):

SA (b) [REDACTED]

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Specifically, on February 17, 2017, OI received the results of a requested search of all EPA issued mobile devices (iPhones) by EPA's OEI. The results of this search identified that 58 EPA employees had the WhatsApp application on their EPA issued mobile device. Based upon this information, OI proceeded to conduct voluntary interviews of all EPA employees who were identified to have the WhatsApp application downloaded onto their EPA issued mobile device. Two EPA employees admitted to using WhatsApp for official EPA work. Each EPA employee provided their EPA iPhones to the interviewing agents who then examined the contents of any conversations within the WhatsApp application. At the conclusion of each interview, OI special agents advised each EPA interviewee to inform their immediate supervisor of the presence of WhatsApp on the EPA device, and to confirm the application's deletion with management. One EPA employee with WhatsApp on their EPA-issued iPhone no longer was employed by the agency at the time of the interviews.

On July 19, 2017, the OI consulted with the U.S. Attorney's Office (USAO), Washington, DC, regarding this matter. The USAO agreed there was no discernable crime committed, and the case should be handled administratively.

On February 27, 2018, OI forwarded these findings to the EPA to determine agency action. On April 2, 2018, Deputy Administrator Michael Flynn declined to take administrative action.

RECOMMENDATION:

This case is recommended for closure.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL
1301 CONSTITUTION AVE., NW
WASHINGTON, DC 20004

DATE: OCTOBER 2, 2018

PREPARED BY: (b) (6), (b) (7)(C)

CASE #: OI-HQ-2017-ADM-0105

CROSS REFERENCE #:

TITLE: EPA EMPLOYEES DOWNLOADING AND/OR USING SIGNAL ENCRYPTED
MESSAGING APPLICATION ON EPA ISSUED MOBILE DEVICES

CASE CLOSING REPORT

Subject(s)	Location	Other Data
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	

VIOLATION:

EPA Records Policy
Federal Records Act of 1950

ALLEGATION:

On February 2, 2017, The Washington Times published an article: Lawsuit demands EPA say if employees using encrypted messages to evade open-records laws. The article alleged unnamed EPA employees had downloaded and used unauthorized encryption applications on their EPA devices in violation of EPA policy, and failed to comply with the FRA, by not maintaining official EPA records. On February 3, 2017, Patrick Sullivan, Assistant Inspector General for Investigations (AIGI), Office of Inspector General (OIG), EPA, referred these allegations for investigation via the OIG Hotline. The Office of Investigations (OI) identified and investigated the following allegation: Did EPA employees (b) (6), (b) (7)(C) EPA or (b) (6), (b) (7)(C) OI, OIG, EPA use the Signal mobile device application to communicate official EPA business in violation of EPA policy and/or the Federal Records Act (FRA).

FINDINGS:

Based upon the OI's investigation, no evidence was found to support the allegation that the Signal application was being used by EPA employees on their EPA issued mobile devices to purposely circumvent the applicable Federal record retention rules. However, the evidence supported the finding that (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) either knowingly or unknowingly, violated EPA policy which restricts the downloading of applications onto EPA devices not approved by the EPA's Office of Environmental Information (OEI).

DISPOSITION:

Regarding the allegation against (b) (6), (b) (7)(C), on April 9, 2018, the EPA provided a response memo to the OIG indicating that the EPA declined to take administrative action against (b) (6), (b) (7)(C).

Regarding the allegation against (b) (6), (b) (7)(C), on April 30, 2018, the (b) (6) provided an email response to the (b) (6), (b) (7)(C) OIG indicating that (b) (6), (b) (7)(C) was verbally counseled for downloading an unauthorized application to (b) (6). EPA issued iPhone.

Based upon the foregoing, there are no further investigative steps to be taken and this case is recommended for closure.